D.B. CIVIL SPECIAL APPEAL(W)NO.1384/2006

Mahesh Chand Sharma
Vs.
State of Raj. & Ors.

DATE OF JUDGMENT :: 27-11-2007

HON'BLE THE ACTING CHIEF JUSTICE SHRI RAJESH BALIA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr. R.K. Mathur for the appellant.

Having heard learned counsel for the appellant, we do not find any merit in this appeal.

The only case set up by the appellant-petitioner in the writ petition was that he and one another gentleman Uma Shankar have secured equal percentage of marks in the selection process, namely 55.42%. While Uma Shankar has been given appointment out of the reserve list, the appellant has not been given appointment without giving criterion of choosing between the two.

However we find in the reply submitted by the respondents that the specific allegation on which the petitioner-appellant claim to denial of equal opportunity in the matter of service under the State has been specifically denied by pointing out that the appellant has in fact secured less marks than the said Uma Shankar by pointing out that the percentage of marks obtained by Uma Shankar was 54.94% whereas percentage of marks obtained by the petitioner was 55.40%. The affidavit is on the basis of record which undoubtedly is in possession of the respondents.

The appellant has not been able to explain on what basis and on what material he has made this averment about equal marks obtained by him alongwith the said Uma Shankar. Neither the basis for calculating the percentage of marks at 55.4% has been disclosed either by averments or by any document nor there is any foundation

for assuming that Uma Shankar has attained equal number of marks. In the absence of any material to give credence to the statement of the appellant who does not possess any information about the calculation of the marks the affidavit sworn on the basis of record cannot be discredited.

Accordingly, the appeal fails and is hereby dismissed as we are in agreement with the learned Single Judge that the appellant is not entitled to any relief.

[MOHAMMAD RAFIQ],J. **[RAJESH BALIA],ACTG.CJ.**

Skant/-